

B. Paperwork Reduction Act Analysis

92. This *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collections contained in this *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making* as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due 60 days after publication of the *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

93. In addition to filing comments on the information collections contained in this *Fifth Report and Order* with the Secretary, a copy of any comments on the information collections should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street S.W., Washington, DC 20554, or via the Internet to jbolev@fcc.gov and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov."

C. Filing Procedures

94. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before 45 days after publication in the Federal Register, and reply comments on or before 66 days after publication in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322, 11326 (1998).

95. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

96. Parties that choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, The Portals, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. In addition, a courtesy copy should be delivered to Leora Hochstein, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Room #4A633, Washington, D.C. 20554.

97. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Comments and reply comments will be available for public inspection

and duplication during regular business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, S.W., Washington, DC 20554. Copies also may be obtained from International Transcription Services, Inc., 445 12th Street, S.W., Room CY-B400, Washington, DC 20554, (202) 314-3070.

D. Contacts for Further Information

98. For further information concerning this *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, contact Leora Hochstein at (202) 418-1022 (Auctions and Industry Analysis Division, Wireless Telecommunications Bureau). For additional information concerning the information collections contained in this *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, contact Judy Boley at (202) 418-0214 or via the Internet at jboley@fcc.gov.

E. Ordering Clauses

99. Accordingly, IT IS ORDERED that, pursuant to the authority granted in Sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 309(j), the petitions for reconsideration and informal requests for clarification filed in response to the *Part I Third Report and Order* are GRANTED IN PART and DENIED IN PART, as provided herein.

100. IT IS FURTHER ORDERED that, pursuant to the authority granted in Sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(b) 155(c)(1), 303(r), and 309(j), this *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making* is hereby ADOPTED and Part 1, Subpart Q of the Commission's rules are amended as set forth in Appendix A, effective 60 days after publication in the *Federal Register*. The information collection contained in these rules becomes effective 60 days after publication in the *Federal Register*, following OMB approval, unless a notice is published in the *Federal Register* stating otherwise.

101. IT IS FURTHER ORDERED that, pursuant to 47 U.S.C. § 155(c) and 47 C.F.R. §§ 0.131(c) and 0.331, the Chief of the Wireless Telecommunications Bureau IS GRANTED DELEGATED AUTHORITY to prescribe and set forth procedures for the implementation of the provisions adopted herein, including the authority to seek comment on and set forth mechanisms relating to the day-to-day conduct of specific auctions.

102. IT IS FURTHER ORDERED that the Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, including the Supplemental Final Regulatory Flexibility Analysis, the Final Regulatory Flexibility Analysis, and the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

APPENDIX A**Final Rules**

Part 1 of title 47 of the Code of Federal Regulations is revised to read as follows:

1. Section 1.2104 is amended by revising paragraphs (g)(1) and (g)(2) to read as follows:

§ 1.2104 Competitive bidding mechanisms.

* * * * *

(g) * * *

(1) Bid withdrawal prior to close of auction. A bidder that withdraws a high bid during the course of an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). In the event that a bidding credit applies to any of the bids, the bid withdrawal payment is either the difference between the net withdrawn bid and the subsequent net winning bid, or the difference between the gross withdrawn bid and the subsequent gross winning bid, whichever is less. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids equals or exceeds that withdrawn bid. The withdrawal payment amount is deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. In the case of multiple bid withdrawals on a single license, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn in the same or subsequent auction(s). In the event that a license for which there have been withdrawn bids is not won in the same auction, those bidders for which a final withdrawal payment cannot be calculated will be assessed an interim bid withdrawal payment equal to 3 percent of the amount of their bid withdrawals. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed at the close of the subsequent auction of the license.

Example: (1) Bidder A withdraws a bid of \$100. Subsequently, Bidder B places a bid of \$90 and withdraws. In that same auction, Bidder C wins the license at a bid of \$95. Withdrawal payments are assessed as follows: Bidder A owes \$5 (\$100 - \$95). Bidder B owes nothing.

Example: (2) Bidder A withdraws a bid of \$100. Subsequently, Bidder B places a bid of \$95 and withdraws. In that same auction, Bidder C wins the license at a bid of \$90. Withdrawal payments are assessed as follows: Bidder A owes \$5 (\$100 - \$95). Bidder B owes \$5 (\$95 - \$90).

Example: (3) Bidder A withdraws a bid of \$100. Subsequently, in that same auction, Bidder B places a bid of \$90 and withdraws. In a subsequent auction, Bidder C places a bid of \$95 and withdraws. Bidder D wins the license in that auction at a bid of \$80. Withdrawal payments are assessed as follows: At the end of the first auction, Bidder A and Bidder B are each assessed an interim withdrawal payment equal to 3 percent of their withdrawn bids pending Commission assessment of a final withdrawal payment (Bidder A would owe 3% of \$100, or \$3, and Bidder B would owe 3% of \$90, or \$2.70). At the end of the second auction, Bidder A would owe \$5 (\$100 - \$95) less the \$3 interim withdrawal payment for a total of \$2. Because Bidder C placed a subsequent bid that was higher than Bidder B's \$90 bid, Bidder B would owe nothing. Bidder C would owe \$15 (\$95 - \$80).

(2) Default or disqualification after close of auction. A bidder assumes a binding obligation to pay its full bid amount upon acceptance of the high bid at the close of an auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (g)(1) of this section plus an additional payment equal to 3 percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent payment will be calculated based on the defaulting bidder's bid amount. If either bid amount is subject to a bidding credit, the 3 percent credit will be calculated using the same bid amounts and basis (net or gross bids) as in the calculation of the payment in paragraph (g)(1) of this section. Thus, for example, if gross bids are used to calculate the payment in paragraph (g)(1) of this section, the 3 percent will be applied to the gross amount of the subsequent winning bid, or the gross amount of the defaulting bid, whichever is less.

* * * * *

2. Section 1.2105 is amended by revising paragraphs (a)(2)(xi) and (c)(1) to read as follows:

§ 1.2105 Bidding application and certification procedures; prohibition of collusion.

* * * * *

(a)(2) * * *

(xi) An attached statement made under penalty of perjury indicating whether or not the applicant has ever been in default on any Commission license or has ever been delinquent on any non-tax debt owed to any Federal agency.

* * * * *

(c) Prohibition of collusion. (1) Except as provided in paragraphs (c)(2), (c)(3) and (c)(4) of this section, after the short-form application filing deadline, all applicants are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the down payment deadline, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application pursuant to § 1.2105(a)(2)(viii).

* * * * *

3. Section 1.2106 is amended by revising paragraph (a) to read as follows:

§ 1.2106 Submission of upfront payments.

(a) The Commission may require applicants for licenses subject to competitive bidding to submit an upfront payment. In that event, the amount of the upfront payment and the procedures for submitting it will be set forth in a Public Notice. Any auction applicant that has previously been in default on any Commission license or has previously been delinquent on any non-tax debt owed to any Federal agency must submit an upfront payment equal to 50 percent more than that set for each particular license. No interest will be paid on upfront payments.

* * * * *

4. Section 1.2108 is amended by revising paragraph (b) to read as follows:

§ 1.2108 Procedures for filing petition to deny against long-form applications.

* * * * *

(b) Within a period specified by Public Notice, and after the Commission by Public Notice announces that long-form applications have been accepted for filing, petitions to deny such applications may be filed. The period for filing petitions to deny shall be no more than ten (10) days. The appropriate licensing Bureau, within its discretion, may, in exigent circumstances, reduce this period of time to no less than five (5) days. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

* * * * *

5. Section 1.2110 is amended by redesignating paragraphs (b) through (m) as (c) through (n), adding new paragraph (b), and revising newly redesignated paragraphs (c), (g)(4), and (j) to read as follows:

§ 1.2110 Designated entities.

* * * * *

(b) Eligibility for small business provisions.

(1) Size attribution. The gross revenues of the applicant (or licensee), its controlling interests and their affiliates shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as a small business under this section. An applicant seeking status as a small business under this section must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its controlling interests and their affiliates for each of the previous three years.

(2) Aggregation of affiliate interests. Persons or entities that hold interests in an applicant (or licensee) that are affiliates of each other or have an identity of interests identified in § 1.2110(c)(5)(iii) will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the requirements of this section.

Example 1: ABC Corp. is owned by individuals, A, B and C, each having an equal one-third voting interest in ABC Corp. A and B together, with two-thirds of the stock have the power to control ABC Corp. and have an identity of interest. If A&B invest in DE Corp., a broadband PCS applicant for block C, A and B's separate interests in DE Corp. must be aggregated because A and B are to be treated as one person or entity.

Example 2: ABC Corp. has subsidiary BC Corp., of which it holds a controlling 51 percent of the stock. If ABC Corp. and BC Corp., both invest in DE Corp., their separate interests in DE Corp. must be aggregated because ABC Corp. and BC Corp. are affiliates of each other.

(3) Exceptions. (i) Small business consortia. Where an applicant (or licensee) is a consortium of small businesses, the gross revenues of each small business consortium member shall not be aggregated. Each small business consortium member must constitute a separate and distinct legal entity to qualify.

(ii) Applicants without identifiable controlling interests. Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

(c) Definitions.

(1) Small businesses. The Commission will establish the definition of a small business on a service-specific basis, taking into consideration the characteristics and capital requirements of the particular service.

(2) Controlling interests. (i) For purposes of this section, controlling interest includes individuals or entities with either *de jure* or *de facto* control of the applicant. *De jure* control is evidenced by holdings of greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(A) the entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(B) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(C) the entity plays an integral role in management decisions.

(ii) Calculation of certain interests.

(A) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(B) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified below.

(C) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(D) Non-voting stock shall be attributed as an interest in the issuing entity.

(E) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(F) Officers and directors of an entity shall be considered to have a controlling interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have a controlling interest in the licensee or applicant.

(G) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(H) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have a controlling interest in such applicant or licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

- (1) The nature or types of services offered by such an applicant or licensee;
- (2) The terms upon which such services are offered; or
- (3) The prices charged for such services.

(I) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have a controlling interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

- (1) The nature or types of services offered by such an applicant or licensee;
- (2) The terms upon which such services are offered; or
- (3) The prices charged for such services.

(3) Businesses owned by members of minority groups and/or women. Unless otherwise provided in rules governing specific services, a business owned by members of minority groups and/or women is one in which minorities and/or women who are U.S. citizens control the applicant, have at least greater than 50 percent equity ownership and, in the case of a corporate applicant, have a greater than 50 percent voting interest. For applicants that are partnerships, every general partner must be either a minority and/or woman (or minorities and/or women) who are U.S. citizens and who individually or together own at least 50 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are U.S. citizens. The interests of minorities and women are to be calculated on a fully diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake

in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis. The term minority includes individuals of Black or African American, Hispanic or Latino, American Indian or Alaskan Native, Asian, and Native Hawaiian or Pacific Islander extraction. See Office of Management and Budget, Revisions to Standards for the Classification of Federal Data on Race Ethnicity, *Notice of Decision*, 62 FR 58782 (October 30, 1997).

* * * * *

(g) * * *

(4) A license granted to an eligible entity that elects installment payments shall be conditioned upon the full and timely performance of the licensee's payment obligations under the installment plan.

(i) Any licensee that fails to submit its quarterly payment on an installment payment obligation (the "Required Installment Payment") may submit such payment on or before the last day of the next quarter (the "first additional quarter") without being considered delinquent. Any licensee making its Required Installment Payment during this period (the "first additional quarter grace period") will be assessed a late payment fee equal to five percent (5%) of the amount of the past due Required Installment Payment. The late payment fee applies to the total Required Installment Payment regardless of whether the licensee submitted a portion of its Required Installment Payment in a timely manner.

(ii) If any licensee fails to make the Required Installment Payment on or before the last day of the first additional quarter set forth in paragraph (i) of this section, the licensee may submit its Required Installment Payment on or before the last day of the next quarter (the "second additional quarter"), except that no such additional time will be provided for the July 31, 1998 suspension interest and installment payments from C or F block licensees that are not made within 90 days of the payment resumption date for those licensees, as explained in Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications

Services (PCS) Licensees, *Order on Reconsideration of the Second Report and Order*, WT Docket No. 97-82, 13 FCC Rcd 8345 (1998). Any licensee making the Required Installment Payment during the second additional quarter (the "second additional quarter grace period") will be assessed a late payment fee equal to ten percent (10%) of the amount of the past due Required Installment Payment. Licensees shall not be required to submit any form of request in order to take advantage of the first and second additional quarter grace periods.

(iii) All licensees that avail themselves of these grace periods must pay the associated late payment fee(s) and the Required Installment Payment prior to the conclusion of the applicable additional quarter grace period(s). Payments made at the close of any grace period(s) will first be applied to satisfy any lender advances as required under each licensee's "Note and Security Agreement," with the remainder of such payments applied in the following order: late payment fees, interest charges, installment payments for the most back-due quarterly installment payment.

(iv) If an eligible entity obligated to make installment payments fails to pay the total Required Installment Payment, interest and any late payment fees associated with the Required Installment Payment within two quarters (6 months) of the Required Installment Payment due date, it shall be in default, its license shall automatically cancel, and it will be subject to debt collection procedures. A licensee in the PCS C or F blocks shall be in default, its license shall automatically cancel, and it will be subject to debt collection procedures, if the payment due on the payment resumption date, referenced in paragraph (g)(4)(ii) of this section, is more than ninety (90) days delinquent.

* * * * *

(j) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that affect designated entity status such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, establishing, as applicable, *de facto* or *de jure* control of the entity. Such information must be maintained at the licensees' facilities or

by their designated agents for the term of the license in order to enable the Commission to audit designated entity eligibility on an ongoing basis.

* * * * *

6. Section 1.2112 is revised to read as follows:

§ 1.2112 Ownership disclosure requirements for short- and long-form applications.

(a) Each application to participate in competitive bidding (*i.e.*, short-form application (*see* 47 CFR 1.2105)), or for a license, authorization, assignment, or transfer of control shall disclose fully the real party or parties in interest and must list the following information:

(1) The name, address, and citizenship of any party holding 10 percent or more of stock in the applicant, whether voting or nonvoting, common or preferred, including the specific amount of the interest or percentage held.

(2) In the case of a limited partnership, the name, address and citizenship of each limited partner whose interest in the applicant is 10 percent or greater (as calculated according to the percentage of equity paid in or the percentage of distribution of profits and losses);

(3) In the case of a general partnership, the name, address and citizenship of each partner, and the share or interest participation in the partnership;

(4) In the case of a limited liability company, the name, address and citizenship of each of its members whose interest in the applicant is 10 percent or greater.

(5) All parties holding indirect ownership interests in the applicant as determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain, that equals 10 percent or more of the applicant, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated and reported as if it were a 100 percent interest.

(6) Any FCC-licensed entity or applicant for an FCC license, in which the applicant or any of the parties identified in subparagraphs (1) through (5) of above, owns 10 percent or more of stock, whether voting or nonvoting, common or preferred. This list must include a description of each such entity's principal

business and a description of each such entity's relationship to the applicant (*e.g.*, Company A owns 10 percent of Company B (the applicant) and 10 percent of Company C, then Companies A and C must be listed on Company B's application, where C is an FCC licensee and/or license applicant);

(b) Designated Entity Status: In addition to the information required under paragraph (a) of this section, each applicant claiming eligibility for small business provisions shall disclose the following:

(1) On its application to participate in competitive bidding (*i.e.*, short-form application (*see* 47 CFR 1.2105)),

- (i) List the names, addresses, and citizenship of all officers, directors, and other controlling interests of the applicant, as described in §1.2110;
- (ii) List any FCC-licensed entity or applicant for an FCC license, in which any controlling interest of the applicant owns a 10 percent or greater interest or a total of 10 percent or more of any class of stock, warrants, options or debt securities. This list must include a description of each such entity's principal business and a description of each such entity's relationship to the applicant;
- (iii) List separately and in the aggregate the gross revenues, computed in accordance with § 1.2110, for each of the following: the applicant, its affiliates, its controlling interests, and affiliates of its controlling interests; and if a consortium of small businesses, the members comprising the consortium;

(2) As an exhibit to its long-form application (*i.e.*, *see* 47 CFR 1.2107):

- (i) List and summarize all agreements or instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as a small business under the applicable designated entity provisions, including the establishment of *de facto* or *de jure* control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

- (ii) List and summarize any investor protection agreements, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.
- (iii) List separately and in the aggregate the gross revenues, computed in accordance with § 1.2110, for each of the following: the applicant, its affiliates, its controlling interests, and affiliates of its controlling interests; and if a consortium of small businesses, the members comprising the consortium.

APPENDIX B**List of Parties****I. Order on Reconsideration**Petitions for Reconsideration

Alpine PCS, Inc., *et al.* ("Alpine PCS")
Community Teleplay, Inc. ("CTI")
DiGiPH PCS, Inc. ("DiGiPH")
Loli, Inc. *et al.* ("Loli")
NextWave Telecom Inc. ("NextWave")

Petition for Limited Reconsideration and Clarification

CONXUS Communications, Inc. ("CONXUS")

Petition for Partial Reconsideration

Houston 936 SMR, Inc. ("Houston 936")

Comments

Bellingham Corporation and Pueblo Communications, Inc. ("Bellingham")
In-Sync Interactive/Akron, Inc. *et al.* ("In-Sync")

Comments on Section 1.2112 Filed in Universal Licensing System Proceeding

Comments of AT&T Wireless Services, Inc. ("AT&T")
Comments of Bell Atlantic Mobile, Inc. ("BAM")
Comments of The Federal Communications Bar Association ("FCBA")
Reply Comments of The Federal Communications Bar Association

II. Fifth Report and OrderComments

AmeriCall International, LLC ("AmeriCall")
Cook Inlet Region, Inc. ("CIRI")
National Telephone Cooperative Association ("NTCA")
NextWave Telecom Inc. ("NextWave")
Rural Telecommunications Group ("RTG")
Western Wireless Corporation ("Western")

Reply Comments

Western Wireless Corporation ("Western")

Ex Parte Filing

Small Business Administration

APPENDIX C

SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS

(ORDER ON RECONSIDERATION)

1. As required by the Regulatory Flexibility Act (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* in WT Docket No. 97-82.² The Commission sought written public comment on the proposals in the *Notice of Proposed Rulemaking*, including comment on the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was incorporated in the report and order section of the *Third Report and Order and Second Further Notice of Proposed Rule Making* ("Part 1 Third Report and Order" and "Second Notice").³ The Commission received seven petitions for reconsideration in response to the *Part 1 Third Report and Order* and two comments in support of the petitions for reconsideration. This supplemental FRFA analyzes the modifications adopted in response to those petitions and comments, and conforms to the RFA.⁴

F. Need for, and Objectives of, This Order on Reconsideration.

2. This *Order on Reconsideration of the Third Report and Order* ("Order on Reconsideration") amends and clarifies the Commission's general competitive bidding rules for all auctionable services. Specifically, the Commission clarifies that the prohibition on collusion begins on the filing deadline for short-form applications and ends on the down payment deadline. In addition, the Commission clarifies and corrects the ownership disclosure requirements. With respect to entities not seeking designated entity status, we eliminate the requirement to include debt and instruments such as warrants, convertible debentures, options and other debt interests in reporting their ownership interests. The Commission also amends its rules to clarify that in the case of multiple bid withdrawals on a single license, within the same or subsequent auction(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amount withdrawn. The Commission further amends its rules to provide that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the bid withdrawals. In addition, the Commission retains, for the most part, the installment payment grace period and late payment fee provisions adopted in the *Part 1 Third Report and Order*, but adopts a slight modification to the payment due dates for late installment payments and associated late fees. The Commission also concludes that licensees defaulting on installment payments are subject to the default provisions of Section 1.2110(f)(4) of our rules (redesignated herein as § 1.2110(g)(4)) and not to Section 1.2104(g).⁵ The Commission incorporates into the Part 1 general competitive bidding rules the "former defaulter" policies adopted with respect to C block auction applicants. The Commission clarifies the circumstances under which installment payment defaulters will be eligible to participate in future auctions. Finally, this *Order on Reconsideration* makes a number of clarifications with respect to the

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, 12 FCC Rcd 5686, 5749 (1997).

³ *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374, 492 ("Part 1 Third Report and Order" and "Second Notice") (Appendix B) (1997).

⁴ See 5 U.S.C. § 604.

⁵ 47 C.F.R. §§ 1.2110(f)(4) (redesignated herein as § 1.2110(g)(4)), 1.2104(g).

restructuring of installment payments, the assignment and transfer of licenses paid for through installment payments, and the unjust enrichment rules for bidding credits.

3. These amendments and clarifications are intended to simplify the Commission's general competitive bidding rules, increase the efficiency of the competitive bidding process, and provide more specific guidance to auction participants.

G. Summary of Significant Issues Raised by Public Comment in Response to the FRFA Contained in The *Part 1 Third Report and Order*.

4. No petitions for reconsideration directly addressed the FRFA contained in the *Part 1 Third Report and Order*.⁶ The Commission, however, did receive petitions for reconsideration of the *Part 1 Third Report and Order* that addressed issues affecting small businesses. In particular, the Commission received petitions opposing various aspects of the installment payment grace period and late payment fee provisions adopted in the *Part 1 Third Report and Order*.⁷ The *Order on Reconsideration* addresses petitioners' arguments and concludes that the revised late payment rules relating to the submission of installment payments are not commercially unreasonable, do not constitute impermissible retroactive rulemaking, and do not violate basic contract principles.⁸ The Commission further determines that the modified grace period and late payment fee provisions apply to 900 MHz SMR and MDS licensees that have signed Promissory Notes and Security Agreements.⁹ In addition, the Commission adopts a slight modification to the payment due dates for late installment payments and associated late fees in order to avoid any confusion as to when such payments are due.¹⁰ The Commission clarifies that, despite amendments to the installment payment rules, licensees in the installment payment program continue to have the opportunity to seek restructuring of installment payments.¹¹ The Commission notes, however, that there is no longer a procedure for requesting a grace period to stay installment payment deadlines pending such restructuring.¹² Rather, licensees will be subject to the automatic late payment provisions of Section 1.2110(g) of the Commission's rules as adopted in this *Order on Reconsideration*. The Commission further clarifies in response to comments that the assignee or transferee of a license paid for through installment payments is not responsible for the license debt until the assignment of license or transfer of control has been consummated.¹³ Also in response to requests for clarification, the Commission clarifies that the unjust enrichment rules for bidding credits do not apply to assignments and transfers of C and F block licenses to non-entrepreneurs.¹⁴

⁶ One party, Merlin Telecom, Inc., filed comments in response to the IRFA. These comments were addressed in the FRFA contained in the *Part 1 Third Report and Order*. See *Part 1 Third Report and Order*, 13 FCC Rcd at 492 (Appendix B).

⁷ See *Part 1 Third Report and Order*, 13 FCC Rcd at 434-442, ¶¶ 103-113.

⁸ See *supra* ¶¶ 16-28.

⁹ See *supra* ¶ 26.

¹⁰ See *supra* ¶¶ 27-28.

¹¹ See *supra* ¶¶ 29-30.

¹² *Id.*

¹³ See *supra* ¶¶ 31-33.

¹⁴ See *supra* ¶¶ 34-37.

H. Description and Estimate of the Number of Small Entities to Which Rules will Apply.

5. The Commission is required to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.¹⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁶ In addition, the term "small business" has the same meaning as the term "small business concern", under Section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities.¹⁷ Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).¹⁸ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹⁹ Nationwide, as of 1992, there were approximately 275,801 small organizations.²⁰ "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."²¹ As of 1992, there were approximately 85,006 such jurisdictions in the United States.²² This number includes 38,978 counties, cities and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.²³ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. Nationwide, there are 4.44 million small business firms, according to SBA reporting data.²⁴

6. The rules adopted in this *Order on Reconsideration* apply to all entities, including small entities, seeking to obtain licenses in auctionable services through competitive bidding. These rules generally apply to future auctions. In estimating the number of small entities that may participate in future auctions of radio services, we anticipate that current radio services licensees are representative of future auction participants. The following is our estimate of the number of small entities that are current radio licensees:

Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under

¹⁵ 5 U.S.C. § 603(b)(3).

¹⁶ 5 U.S.C. § 601(6).

¹⁷ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

¹⁸ 15 U.S.C. § 632.

¹⁹ 5 U.S.C. § 601(4).

²⁰ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

²¹ 5 U.S.C. § 601(5).

²² U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

²³ *Id.*

²⁴ See 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

the SBA rules applicable to radiotelephone (wireless) companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.²⁵ According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.²⁶ Therefore, even if all 12 of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, we do not know the number of cellular licensees, since a cellular licensee may own several licenses. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Service (PCS) licensees in one group. According to the most recent *Telecommunications Industry Revenue* data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services.²⁷ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are no more than 808 small cellular service carriers.

220 MHz Radio Service -- Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to radiotelephone communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.²⁸ According to a 1995 estimate by the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.²⁹ Therefore, assuming this general ratio has not changed significantly in recent years in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

220 MHz Radio Service -- Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.³⁰ We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding

²⁵ 13 C.F.R. § 121.201, SIC code 4812.

²⁶ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

²⁷ *Trends in Telephone Service*, Table 19.3 (March 2000).

²⁸ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) code 4812.

²⁹ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

³⁰ 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, ¶¶ 291-295 (1997).

\$15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.³¹ The SBA has approved these definitions.³² An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.³³ Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group ("REAG") licenses, and 875 Economic Area (EA) licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: 1 of the Nationwide licenses, 67% of the Regional licenses, 47% of the REAG licenses and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.³⁴ A second 220 MHz Radio Service auction began on June 8, 1999 and closed on June 30, 1999. This auction offered 225 licenses in 87 EAs and four REAGs. (A total of 9 REAG licenses and 216 EA licenses. No nationwide licenses were available in this auction.) Of the 215 EA licenses won, 153 EA licenses (71%) were won by bidders claiming small business status. Of the 7 REAG licenses won, 5 REAG licenses (71%) were won by bidders claiming small business status.

Private and Common Carrier Paging. The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.³⁵ At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.³⁶ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are no more than 172 small paging carriers. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that

³¹ 220 MHz Third Report and Order, 12 FCC Rcd at 11068-69, ¶ 291.

³² See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

³³ See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

³⁴ Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC-18-H, DA No. 99-229 (Wireless Telecom. Bur., rel. Jan. 22, 1999).

³⁵ 13 C.F.R. § 121.201, SIC code 4812.

³⁶ *Trends in Telephone Service*, Table 19.3 (Feb. 19, 1999).

for radiotelephone (wireless) companies,³⁷ and the most recent *Telecommunications Industry Revenue* data shows that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services.³⁸ Consequently, we estimate that there are no more than 172 small mobile service carriers.

Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.³⁹ For block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁴⁰ These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.⁴¹ No small businesses within the SBA-approved definition bid successfully for licenses in blocks A and B. There were 90 winning bidders that qualified as small entities in the C block auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for blocks D, E, and F.⁴² On March 23, 1999, the Commission held another auction (Auction No. 22) of C, D, E, and F block licenses for PCS spectrum returned to the Commission by previous license holders. In that auction, 48 bidders claiming small business, very small business or entrepreneurial status won 272 of the 341 licenses (80%) offered. Based on this information, we conclude that the number of small broadband PCS licensees includes the 90 winning C block bidders, the 93 qualifying bidders in the D, E, and F blocks, and the 48 winning bidders from Auction No. 22, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules.

Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions, however, have not yet been scheduled. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for our purposes here, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

³⁷ 13 C.F.R. § 121.201, SIC code 4812.

³⁸ *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

³⁹ See *Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, FCC 96-278, WT Docket No. 96-59, ¶¶ 57-60 (released Jun. 24, 1996), 61 FR 33859 (Jul. 1, 1996); see also 47 C.F.R. § 24.720(b).

⁴⁰ See *Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, FCC 96-278, WT Docket No. 96-59, ¶ 60 (1996), 61 FR 33859 (Jul. 1, 1996).

⁴¹ See, e.g., *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581-84 (1994).

⁴² FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997).

Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.⁴³ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).⁴⁴ We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁴⁵ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.⁴⁶ Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁴⁷ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

Specialized Mobile Radio (SMR). The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to two tiers of firms: (1) "small entities," those with revenues of no more than \$15 million in each of the three previous calendar years; and (2) "very small entities," those with revenues of no more than \$3 million in each of the three previous calendar years. The regulations defining "small entity" and "very small entity" in the context of 800 MHz SMR (upper 10 MHz and lower 230 channels) and 900 MHz SMR have been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for our purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz (upper 10 MHz) and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auction. Of the 1,020 licenses won in the 900 MHz auction, 263 licenses were won by bidders qualifying as small and very small entities. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities.

Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of small businesses that could be affected by the rules. However, the Commission's 1994 Annual Report on PLMRs⁴⁸ indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Any entity engaged in a commercial activity is eligible to hold a PLMR license. Therefore, these rules could potentially affect every small business in the United States if PLMR licenses are subject to auction.

⁴³ The service is defined in § 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

⁴⁴ BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757 and 22.759.

⁴⁵ 13 C.F.R. 121.201, SIC code 4812.

⁴⁶ The service is defined in § 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

⁴⁷ 13 C.F.R. § 121.201, SIC code 4812.

⁴⁸ Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at 116.

Amateur Radio Service. We estimate that 8,000 applicants will apply for vanity call signs in FY 2000. All are presumed to be individuals.

Aviation and Marine Radio Service. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules for radiotelephone communications.⁴⁹ Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of our evaluations and conclusions here, we estimate that there may be at least 712,000 potential licensees that are individuals or small entities, as that term is defined by the SBA.

Marine Coast Service. Between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of this auction, and for future public coast auctions, the Commission defines a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. A "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.⁵⁰ There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the Commission's definition, which has been approved by the SBA.

Location and Monitoring Service (LMS). The SBA has not developed a definition of small entities specifically applicable to LMS licensees. Therefore, the applicable definition under SBA rules of a small entity is the definition under the rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.⁵¹ According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.⁵² Therefore, using such data, even if all twelve of these firms were LMS companies, nearly all such carriers were small businesses under the SBA's definition. As a practical matter, there are only a handful of existing LMS licensees -- those being those licensed under the former Automatic Vehicle Monitoring service.

Fixed Microwave Services. Microwave services include common carrier,⁵³ private-operational fixed,⁵⁴ and broadcast auxiliary radio services.⁵⁵ At present, there are approximately 22,015 common carrier fixed

⁴⁹ 13 C.F.R. § 121.201, SIC code 4812.

⁵⁰ Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order* (rel. July 9, 1998) PR Docket No. 92-257, FCC 98-151

⁵¹ 13 C.F.R. § 121.201, SIC code 4812.

⁵² 1992 Census, Series UC92-S-1, at Table 5, SIC code 4812.

⁵³ 47 C.F.R. §§ 101 *et seq.* (formerly, part 21 of the Commission's Rules).

⁵⁴ Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. parts 80 and 90. Stations in this service are called operational-fixed to distinguish them (continued....)

licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For our purposes here, we will utilize the SBA's definition applicable to radiotelephone companies -- *i.e.*, an entity with no more than 1,500 persons.⁵⁶ Under this definition, we estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities.

Local Multipoint Distribution Service. The Commission held two auctions for licenses in the Local Multipoint Distribution Services (LMDS) (Auction No. 17 and Auction No. 23). For both of these auctions, the Commission defined a small business as an entity, together with its affiliates and controlling principals, having average gross revenues for the three preceding years of no more than \$15 million but not more than \$40 million. A very small business was defined as an entity, together with affiliates and controlling principals, having average gross revenues for the three preceding years of not more than \$15 million. Of the 144 winning bidders in Auction Nos. 17 and 23, 125 bidders (87%) were small or very small businesses.

24 GHz -- Incumbent 24 GHz Licensees. The rules we are adopting today may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission has not developed a definition of small entities applicable to licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for the radiotelephone industry that provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.⁵⁷ The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.⁵⁸ This information notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc.⁵⁹ Both Teligent and TRW appear to have more than 1,500 employees. Therefore, it appears that no incumbent licensee in the 24 GHz band is a small business entity.

Future 24 GHz Licensees. The proposals also affect potential new licensees on the 24 GHz band. Pursuant to 47 C.F.R. § 24.720(b), the Commission has defined "small business" for Blocks C and F broadband PCS licensees as firms that had average gross revenues of less than \$40 million in the three

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from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

⁵⁵ Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. See 47 C.F.R. 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁵⁶ 13 C.F.R. § 121.201, SIC 4812.

⁵⁷ See 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

⁵⁸ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

⁵⁹ Teligent has acquired the DEMS licenses of FirstMark, the only other licensee in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

previous calendar years. This regulation defining “small business” in the context of broadband PCS auctions has been approved by the SBA.⁶⁰ With respect to new applicants in the 24 GHz band, we shall use this definition of “small business” and apply it to the 24 GHz band under the name “entrepreneur.” With regard to “small business,” we shall adopt the definition of “very small business” used for 39 GHz licenses and PCS C and F block licenses: businesses with average annual gross revenues for the three preceding years not in excess of \$15 million. Finally, “very small business” in the 24 GHz band shall be defined as an entity with average gross revenues not to exceed \$3 million for the preceding three years. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed.

39 GHz. The Commission held an auction (Auction No. 30) for fixed point-to-point microwave licenses in the 38.6 to 40.0 GHz band (39 GHz Band).⁶¹ For this auction, the Commission defined a small business as an entity, together with affiliates and controlling interests, having average gross revenues for the three preceding years of not more than \$40 million. A very small business was defined as an entity, together with affiliates and controlling principals, having average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these definitions.⁶² Of the 29 winning bidders in Auction No. 30, 18 bidders (62%) were small business participants.

Multipoint Distribution Service (MDS). This service involves a variety of transmitters, which are used to relay data and programming to the home or office, similar to that provided by cable television systems.⁶³ In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of \$40 million.⁶⁴ This definition of a small entity in the context of MDS auctions has been approved by the SBA.⁶⁵ These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended.⁶⁶ Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.⁶⁷ The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business.

⁶⁰ See Implementation of Section 309(j) of the Communications Act — Competitive Bidding, Fifth Report and Order, 9 FCC Rcd 5532, 5581-82 ¶ 115 (1994).

⁶¹ See 39 GHz Band Auction Closes; Winning Bidders of 2,173 Licenses Announced, *Public Notice*, DA 00-1035 (rel. May 10, 2000).

⁶² See Letter to Ms. Kathleen O’Brien Ham, Chief, Auction and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, U.S. Small Business Administration, dated February 4, 1998.

⁶³ For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

⁶⁴ 47 CFR 1.2110 (a)(1).

⁶⁵ Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

⁶⁶ 47 U.S.C. 309(j).

⁶⁷ *Id.* A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. See Rand McNally 1992 *Commercial Atlas and Marketing Guide*, 123rd Edition, pp. 36-39.

MDS is also heavily encumbered with licensees of stations authorized prior to the MDS auction. SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$11 million or less in annual receipts.⁶⁸ This definition includes MDS systems, and thus applies to incumbent MDS licensees and wireless cable operators which may not have participated or been successful in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of \$11 million annually. Therefore, for purposes of this analysis, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules.

Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.⁶⁹ There are a total of approximately 127,540 licensees within these services. Governmental entities⁷⁰ as well as private businesses comprise the licensees for these services. As noted above, governmental entities with populations of less than 50,000 fall within the SBA definition of a small entity.⁷¹ There are 85,006 governmental entities in the nation, as of the last census.⁷² This number includes such entities as states, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000; however, this number includes 38,978 counties, cities, and towns and of those, 37,566 or 96 percent, have populations of fewer than 50,000.⁷³ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 96 percent or 81,600 are small entities that may be affected by our rules.

⁶⁸ 13 C.F.R. §121.201.

⁶⁹ With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 C.F.R. §§ 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service, which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 C.F.R. §§ 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 C.F.R. §§ 90.33 through 90.55.

⁷⁰ 47 C.F.R. § 1.1162.

⁷¹ 5 U.S.C. § 601(5).

⁷² 1992 Census of Governments, Bureau of the Census, U.S. Department of Commerce.

⁷³ *Id.*

Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.⁷⁴ At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

Wireless Communications Services. This service can be used for fixed, mobile, radio-location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities and one winning bidder that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

General Wireless Communication Service. This service was created by the Commission on July 31, 1995⁷⁵ by transferring 25 MHz of spectrum in the 4660-4685 MHz band from the federal government to private sector use. The Commission sought and obtained SBA approval of a refined definition of "small business" for GWCS in this band.⁷⁶ According to this definition, a small business is any entity, together with its affiliates and entities holding controlling interests in the entity, that has average annual gross revenues over the three preceding years that are not more than \$40 million.⁷⁷ By letter dated March 30, 1999, NTIA reclaimed the spectrum allocated to GWCS and identified alternative spectrum at 4940-4990 MHz. On February 23, 2000, the Commission released its *Notice of Proposed Rule Making* in WT Docket No. 00-32 proposing to allocate and establish licensing and service rules for the 4.9 GHz band.⁷⁸

Television Broadcasting Stations. The SBA defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business.⁷⁹ Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.⁸⁰ Included in this industry are commercial, religious, educational, and other television stations.⁸¹ Also included are establishments primarily engaged in television broadcasting

⁷⁴ This service is governed by subpart I of part 22 of the Commission's Rules. See 47 C.F.R. §§ 22.1001 through 22.1037.

⁷⁵ See Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94-32, *Second Report and Order*, 11 FCC Rcd 624 (1995).

⁷⁶ See Letter to Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, U.S. Small Business Administration, dated May 19, 1998.

⁷⁷ See 47 C.F.R. § 26.4.

⁷⁸ See In the Matter of the 4.9 GHz Band Transferred From Federal Government Use, *Notice of Proposed Rule Making*, WT Docket No. 00-32, 15 FCC Rcd 4778 (2000).

⁷⁹ 13 C.F.R. § 121.201, Standard Industrial Code (SIC) 4833 (1996).

⁸⁰ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

⁸¹ *Id.* See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes Television Broadcasting Stations (SIC Code 4833) as: Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included (continued....)

and which produce taped television program materials.⁸² Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.⁸³

There were 1,509 television stations operating in the nation in 1992.⁸⁴ That number has remained fairly steady as indicated by the approximately 1,590 operating television broadcasting stations in the nation as of January 1999.⁸⁵ For 1992,⁸⁶ the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments.⁸⁷ Thus, of the 1,590 television stations approximately 77%, or 1,224, of those stations are considered small businesses.⁸⁸ As of January 1999, 2136 low power television stations and 4921 television translator stations were also licensed,⁸⁹ and we believe the vast majority of these stations are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

Radio Broadcasting Stations. The SBA defines a radio broadcasting station that has no more than \$5 million in annual receipts as a small business.⁹⁰ A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.⁹¹ Included in this industry are commercial, religious, educational and other radio stations.⁹² Radio broadcasting stations that primarily are engaged in radio broadcasting and that produce radio program materials are similarly included.⁹³ However, radio stations that are separate establishments and are primarily engaged in producing radio program material are

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here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

⁸² Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

⁸³ *Id.*; SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

⁸⁴ FCC News Release No. 31327, January 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 6, Appendix A-9.

⁸⁵ FCC News Release, "Broadcast Station Totals as of January 31, 1999" (rel. Feb. 18, 1999).

⁸⁶ Census for communications establishments are performed every five years, during years ending with a "2" or "7." See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 6, III.

⁸⁷ The amount of \$10 million was used to estimate the number of small business establishments because the relevant census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

⁸⁸ We use the 77% figure of television stations producing less than \$10 million in revenue for 1992 and apply it to the 1999 total of 1,590 television stations to arrive at stations categorized as small businesses.

⁸⁹ FCC News Release, "Broadcast Station Totals as of January 31, 1999" (rel. Feb. 18, 1999).

⁹⁰ 13 C.F.R. § 121.201, SIC 4832.

⁹¹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 6, Appendix A-9.

⁹² *Id.*

⁹³ *Id.*

classified under another SIC number.⁹⁴ The 1992 census indicates that 96% (5,861 of 6,127) of radio station establishments produced less than \$5 million in revenue in 1992.⁹⁵ Official Commission records indicate that 11,334 individual radio stations were operating in 1992.⁹⁶ As of January 1999, official Commission records indicate that 12,496 radio stations were operating.⁹⁷ We conclude that a similarly high percentage (96%) of current radio broadcasting licensees are small entities.⁹⁸ As of January 1999, there were also 3171 FM translator/booster stations licensed, and we believe the vast majority of these stations are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-radio affiliated companies.

Instructional Television Fixed Service (ITFS). In addition, there are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions may be included in the definition of a small entity.⁹⁹ ITFS is a non-pay, non-commercial educational microwave service that, depending on SBA categorization, has, as small entities, entities generating either \$10.5 million or less, or \$11.0 million or less, in annual receipts.¹⁰⁰ However, we do not collect, nor are we aware of other collections of, annual revenue data for ITFS licensees. Thus, we conclude that up to 1932 of these licensees are small entities.

Pending and Future Broadcast Applicants. We have given the SBA broadcast size standards, *supra*. The competitive bidding procedures set forth in the *Order on Reconsideration* will affect: (1) any entity with a pending application for a construction permit for a new full service commercial radio or analog television broadcast station, if mutually exclusive applications have been filed; (2) any entity that files an application in the future for a new full service commercial radio or analog television station, if mutually exclusive applications are filed; (3) any entity with a pending application on file, or filing an application in the future, for a new low power television station, or a television or FM translator station, if mutually exclusive applications have been or are filed; (4) any entity that has a pending or future application to make a major change in an existing facility in any commercial broadcast or secondary broadcast service, if mutually exclusive applications have been or are filed; and (5) any entity that has filed or files in the future an application for a license for an ITFS station, if mutually exclusive applications have been filed or are filed.

We estimate that there are currently pending before the Commission the following mutually exclusive applications:

- approximately 620 mutually exclusive applications for full power commercial radio stations, and approximately 165 competing applications for full power commercial analog television stations;¹⁰¹

⁹⁴ *Id.*

⁹⁵ The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

⁹⁶ FCC News Release No. 31327, January 13, 1993.

⁹⁷ FCC News Release, "Broadcast Station Totals as of January 31, 1999" (rel. Feb. 18, 1999).

⁹⁸ We use the 96% figure of radio station establishments with less than \$5 million revenue from the census data and apply it to the 12,496 individual station count to arrive at 11,996 individual stations as small businesses.

⁹⁹ See 5 U.S.C. §§ 601(3)-(5).

¹⁰⁰ See 13 C.F.R. § 121.210, SIC 4833, 4841 and 4899.

¹⁰¹ These numbers of pending applications do not include situations where both commercial and noncommercial applicants have filed competing applications for nonreserved, or "commercial," channels. As described in the *First* (continued....)

- approximately 275 mutually exclusive applications for low power television stations and television translator stations, and approximately 20 competing applications for FM translator stations; and
- approximately 200 or more mutually exclusive applications for ITFS stations.

Although applicants for broadcast construction permits have been required to demonstrate sufficient financing to construct and initially operate the proposed broadcast station, we do not require the filing of financial information specifically concerning the entity seeking a construction permit, such as the entity's annual revenues. Thus, we have no data on file as to whether entities with pending permit applications, which are subject to the new competitive bidding selection procedures adopted for the broadcast services, meet the SBA's definition of a small business concern. However, we conclude that, given the smaller size of the markets at issue in the pending applications, most of the entities with pending applications for a permit to construct a new primary or secondary broadcast station are small entities, as defined by the SBA rules.

In addition to the pending applicants that may be affected by the auction procedures adopted for the broadcast services, any entity that applies for a construction permit for a new broadcast station in the future will be subject to these competitive bidding rules if mutually exclusive applications are filed. It is not possible, at this time, to estimate the number of markets for which mutually exclusive applications will be received, nor the number of entities that in the future may seek a construction permit for a new broadcast station. Given the fact that fewer new stations (particularly fewer analog television stations) will be licensed in the future and that these stations generally will be located in smaller, more rural areas, we conclude that most of the entities applying for these stations will be small entities, as defined by the SBA rules.

Digital Audio Radio Service (DARS). The Commission has not developed its own definition of "small entity" for purposes of licensing satellite delivered services. Accordingly, we rely on the definition of "small entity" provided under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified.¹⁰² A "small entity" under these SBA rules is defined as an entity with \$11.0 million or less in annual receipts. The two current U.S. satellite DARS licensees, XM Satellite Radio and Sirius Satellite Radio, are in the midst of deploying their systems, and appear to have no revenues. Thus, XM and Sirius are "small entities" under the SBA definition.

Direct-to-Home (DTH) Satellite Service -- Direct Broadcast Satellite (DBS) and Home Satellite Services (HSD). Video service is available from high power DBS satellites that transmit signals to small DBS dish antennas installed at subscribers' premises, and from medium and low power satellites requiring larger satellite dish antennas. In the last year, DirecTV merged with United States Satellite Broadcasting Co., Inc. (USSB) and acquired PrimeStar. DirecTV and EchoStar are among the ten largest providers of multichannel video programming service. DBS represented a 12.5% share of the national MVPD market in June 1999 and HSD represented another 2.2% of that market. Thus, it appears that no DBS or HSD operators meet the SBA's definition of "small entity."

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Report and Order, resolution of these cases will be addressed in our noncommercial proceeding (MM Docket No. 95-31).

I. Description of the Projected Reporting, Record-keeping, and Other Compliance Requirements.

7. One rule amendment adopted in this *Order on Reconsideration* will decrease the reporting requirements for entities not seeking designated entity status. Other rule amendments, however, may increase the reporting and recordkeeping requirements for all license applicants, including small entities.

8. Specifically, we amend Section 1.2112 of our rules to reduce the amount of ownership information that applicants must report on their short- and long-form applications.¹⁰³ Section 1.2112 requires applicants to identify direct and indirect owners with an interest of 10 percent or greater. Previously under Section 1.2112, in calculating the 10 percent interest, we required applicants to include debt and interests such as warrants and convertible debentures, stock options, debt securities or other debt interests. In this *Order on Reconsideration*, we amend Section 1.2112 to provide that such interests need not be reported unless the entity is seeking status as a designated entity. For the purpose of determining designated entity status and eligibility for bidding credits, we believe that warrants, convertible debentures, options and other debt interests should be treated as having been exercised. For the broader purpose of determining all applicants' ownership interests, we will not require information regarding interests in an applicant that have not yet vested.

9. The Commission amends its general competitive bidding rules to permit "former defaulters," *i.e.*, applicants that have defaulted or been delinquent in the past, but have since paid all of their outstanding non-Internal Revenue Service Federal debts and all associated charges or penalties, to certify on FCC Form 175 that they are not in default and are, therefore, eligible for auction participation.¹⁰⁴ "Former defaulters" will be required to pay an upfront payment amount of 1.5 times the normal amount set by the Bureau for any given license in a Commission auction.¹⁰⁵ So that the Bureau may implement this rule, it will require applicants to make an additional certification revealing whether they or any of their controlling interests or affiliates have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency.¹⁰⁶

10. The *Order on Reconsideration* also clarifies that the assignee or transferee of a license paid for through installment payments is not responsible for the license debt until the assignment or transfer has been consummated.¹⁰⁷ There may be cases in which the Commission believes that an assignment or transfer has been consummated when it has not. In such instances, the Commission may mistakenly initiate debt collection procedures against the wrong party. If such action occurs, the affected party should notify the Commission in writing that the underlying transaction was not consummated and the Commission will stop its debt collection proceedings against that party.¹⁰⁸

¹⁰³ See *supra* ¶12.

¹⁰⁴ See *supra* ¶ 41.

¹⁰⁵ See *supra* ¶¶ 42-43.

¹⁰⁶ See *supra* ¶ 42.

¹⁰⁷ See *supra* ¶¶ 32-33.

¹⁰⁸ See *supra* ¶¶ 26-27.

J. Steps Taken to Minimize the Economic Impact on Small Entities, and Significant Alternatives Considered.

11. Incorporation into the Part 1 general competitive bidding rules of the “former defaulter” policies adopted with respect to C block auction applicants will provide more opportunities for all entities, including small entities, to participate in spectrum auctions. The “former defaulter” policies adopted herein permit all “former defaulters” including small entities, to participate in future spectrum auctions under certain conditions.

12. All petitioners in this proceeding oppose some aspect of the Commission’s installment payment grace period and late payment fee provisions adopted in the *Part 1 Third Report and Order*. The Commission has reviewed petitioners’ arguments and concludes that it will retain these provisions, but will adopt a slight modification to the payment due dates for late installment payments and associated late fees.¹⁰⁹ Specifically, we amend the due dates for installment payments to comport with quarterly due dates. An alternative would be to maintain the current rules, but this modification may avoid confusion as to when such payments are due. Revisions to the Commission’s installment payment rules were first proposed in the notice section of the *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, released in 1997.¹¹⁰ Comments on installment payment issues were received and addressed in the *Part 1 Third Report and Order*.¹¹¹ In response to the *Part 1 Third Report and Order*, the Commission received petitions for reconsideration of its installment payment grace period and late payment fee provisions. In concluding to retain these provisions in this *Order on Reconsideration*, the Commission has thoroughly reviewed and carefully evaluated all of the opposing arguments presented.¹¹² The Commission rejected the alternative of reinstating the requirement for licensees using installment payments to submit grace period requests demonstrating financial needs due, in part, to the burdens that procedure imposes on small business licensees.

13. The Commission determines that the revised late payment rules relating to the submission of installment payments are not commercially unreasonable, do not constitute impermissible retroactive rulemaking, and do not violate basic contract principles.¹¹³ The late installment payment provisions were not intended to serve as a tool that licensees might use in their normal course of planning auction strategy and build-out. These provisions are provided for extraordinary circumstances -- instances of financial distress -- for which temporary relief is appropriate. We considered a number of alternatives presented by petitioners, but found that those proposals were not consistent with the Commission’s fundamental goal in adopting the late payment provisions, which is to encourage payment on the due date.¹¹⁴ The Commission has determined that this goal is best attainable by adhering to the 5 percent and 10 percent late payment fee schedule adopted in the *Part 1 Third Report and Order*. The Commission further determines that the modified grace period and late payment fee provisions apply to 900 MHz SMR and MDS licensees that have signed Promissory Notes and Security Agreements.¹¹⁵ The SMR and MDS

¹⁰⁹ See *supra* ¶¶ 16-28.

¹¹⁰ Amendment of Part 1 of the Commission’s Rules -- Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket No. 97-82, 12 FCC Rcd 5686, 5725 (1997).

¹¹¹ *Part 1 Third Report and Order* at 13 FCC Rcd at 434-442, ¶¶ 103-113.

¹¹² See *supra* ¶¶ 16-28.

¹¹³ *Id.*

¹¹⁴ See *supra* ¶¶ 18-28.

¹¹⁵ See *supra* ¶ 26.

notes emphasized that the Commission's rules, as amended, would take precedence over the terms of the notes in case of any conflict. The Commission clarifies that, despite amendments to the installment payment rules, licensees in the installment payment program continue to have the opportunity to seek restructuring of installment payments.¹¹⁶ The Commission notes, however, that there is no longer a procedure for requesting a grace period to stay installment payment deadlines pending such restructuring.¹¹⁷ Rather, licensees will be subject to the automatic late payment provisions of Section 1.2110(g) of the Commission's rules as adopted in this *Order on Reconsideration*.

K. Report to Congress.

14. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Order on Reconsideration*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of the Order and this FRFA (or a summary thereof) will be published in the Federal Register. *See* 5 U.S.C. § 604(b). A copy of the Order and this FRFA will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

¹¹⁶ *See supra* ¶¶ 29-30.

¹¹⁷ *Id.*

APPENDIX D

FINAL REGULATORY FLEXIBILITY ANALYSIS

(FIFTH REPORT AND ORDER)

1. As required by the Regulatory Flexibility Act (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the notice section of the *Third Report and Order and Second Further Notice of Proposed Rule Making* ("Part 1 Third Report and Order" and "Second Notice") in WT Docket No. 97-82.² The Commission sought written public comment on the proposals in the *Second Notice*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) in this *Fifth Report and Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996).³

A. Need for, and Objectives of, This *Fifth Report and Order*.

15. This *Fifth Report and Order* makes substantive amendments to the Commission's general competitive bidding rules for auctionable services. Specifically, the *Fifth Report and Order* adopts a "controlling interest" standard for the attribution of gross revenues in determining whether a license applicant qualifies as a small business.⁴ The "controlling interest" standard is intended to prevent larger firms from illegitimately seeking status as small businesses and ensure that only those entities truly meriting small business status are eligible for the small business provisions. In addition, the *Order* establishes a maximum 10-day filing period for the submission of petitions to deny the long-form applications of winning bidders.⁵ The Commission increases the filing period from 5 days (as adopted in the *Part 1 Third Report and Order*) to 10 days in order to afford parties (including small businesses) additional flexibility in challenging license awards. The Commission also delegates to the Wireless Telecommunications Bureau the authority to make any revisions to the Code of Federal Regulations that are necessary to conform the service-specific auction rules to the Part 1 general competitive bidding rules.⁶ Finally, the Commission addresses other issues raised by the *Second Notice* and affirms its existing rules relative to those issues.

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374 (1997) ("Part 1 Third Report and Order" and "Second Notice") (see IRFA at Appendix C).

³ See 5 U.S.C. § 603.

⁴ See *supra* ¶¶ 58-67.

⁵ See *supra* ¶¶ 74-77.

⁶ See *supra* ¶ 78.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA.

16. No comments were received directly in response to the IRFA. The Commission, however, did receive comments on issues affecting small businesses in response to the *Second Notice*.⁷ Specifically, RTG proposed that we establish geographic area licenses no larger than BTAs in all future auctions.⁸ RTG argued that the use of small areas facilitates the delivery of service to rural areas by increasing the opportunity for rural small businesses and rural telephone companies to acquire licenses.⁹ RTG also contends that authorizing smaller geographic areas increases the number of licenses available and the diversity of licenses, and facilitates the buildout of networks.¹⁰ We reject RTG's proposal. Section 309(j) of the Communications Act requires the Commission to disseminate licenses to a wide variety of applicants, including small businesses and rural telephone companies, and to promote the development and rapid deployment of new technologies to the public, including those residing in rural areas.¹¹ We believe that we can best satisfy this mandate by establishing license areas that promote these goals on a service-specific basis. Although we have used small license areas in several services (e.g., broadband PCS D, E and F blocks and LMDS) and may do so in specific services in the future, we are unwilling to limit our flexibility by adopting an ironclad rule against large service areas. We anticipate, for example, that certain satellite-based services may not be particularly suited to small geographic area licensing, while other services may indeed be more suitable for this type of license category (i.e., the broadband PCS C block auction).

17. Comments were also filed in response to the Commission's proposal to adopt a "controlling interest" standard as its general attribution rule for determining which applicants qualify as small businesses.¹² In this *Fifth Report and Order*, the Commission adopts a "controlling interest" standard and addresses the related comments.¹³ Under the "controlling interest" standard, the gross revenues of the applicant, its controlling interests and their affiliates will be aggregated and attributed to the applicant in determining whether the applicant qualifies as a small business. A "controlling interest" includes individuals or entities that have control of the applicant as determined by the principles of *de jure* or *de facto* control.

18. Commenters raised various issues regarding the attribution standard. Some commenters expressed concern over whether the revenues of so called "passive investors" would be attributed to the applicant.¹⁴ The Commission states that the controlling interest standard adopted herein will be applied to all investors of the applicant.¹⁵ In other words, if any investor has either *de jure* or *de facto* control of the

⁷ *Second Notice*, 13 FCC Rcd at 471-482, ¶¶ 170-194.

⁸ RTG Comments at 14-15.

⁹ *Id.* at 15.

¹⁰ *Id.*

¹¹ 47 U.S.C. § 309(j)

¹² *Second Notice*, 13 FCC Rcd at 477-478, ¶¶ 185-187.

¹³ *See supra* ¶¶ 58-67.

¹⁴ Western Wireless Corporation ("Western") Comments at 8-9; RTG Comments at 21; AmeriCall International, LLC ("AmeriCall") Comments at 2-3.

¹⁵ *See supra* ¶ 63.

applicant, that investor's gross revenues will be attributed to the applicant for purposes of determining whether the applicant qualifies as a small business.¹⁶ Some commenters suggested that the Commission adopt a minimum equity requirement for controlling interests.¹⁷ The Commission concludes that rather than focusing solely on equity-holdings, applicants will be required to identify those controlling interests that actually have control through application of the principles of *de jure* or *de facto* control.¹⁸ Western Wireless Corporation ("Western") urges the Commission not to amend its attribution rules to include entities that have management and joint marketing agreements with the applicant or licensee.¹⁹ The Commission adopts provisions that make attributable the gross revenues of those that have management or marketing agreements where such agreements grant authority over key aspects of the applicant's or licensee's business.²⁰ Cook Inlet Region, Inc., ("CIRI") urges the Commission not to apply any new attribution or affiliation rules adopted in this proceeding to current C block licensees that won their licenses under the control group broadband PCS rules.²¹ The Commission will not reassess the eligibility of current C and F block licensees to continue to hold their licenses under the new attribution rules adopted herein.²² These licensees will remain eligible to hold their licenses regardless of whether or not they would qualify under the newly established attribution rules. As to future C and F block auctions, however, all applicants, including existing C and F block licensees, will be subject to the attribution rules in effect at the time of filing their short-form applications.²³ For auctions that begin within two years after the start of Auction No. 22 (March 23, 1999), our new attribution rules will have no effect on the eligibility as an entrepreneur of any entity that was eligible for, and participated in, Auction No.5 or Auction No.10.²⁴ Eligibility for small business preferences, however, will be determined based on the attribution rules in effect at the time of an applicant's short-form filing.²⁵

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply.

19. The Commission is required to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.²⁶ The rules adopted in this *Fifth Report and Order* apply to all entities, including small entities, seeking to obtain licenses in auctionable services through competitive bidding. These rules generally apply to future auctions. In estimating the number of small entities that may participate in future auctions of wireless services, we anticipate that current wireless services licensees are representative of future auction participants. The

¹⁶ *Id.*

¹⁷ NextWave Comments at 5; AmeriCall Comments at 3.

¹⁸ *See supra* ¶ 66.

¹⁹ Western Comments at 3-5.

²⁰ *See supra* ¶ 64.

²¹ CIRI Comments at 2-4.

²² *See supra* ¶ 67.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ 5 U.S.C. § 603(b)(3).

Commission hereby incorporates into this FRFA section the detailed Supplemental FRFA analysis and descriptions of potentially affected small entities, *supra*, including the cellular, broadband and narrowband PCS, 220 MHz, paging, mobile service, air-ground, SMR, PLMR, aviation and marine, offshore radiotelephone services, GWCS, fixed microwave, rural, wireless, public safety, governmental entities and Marine Coast Services.²⁷

D. Description of the Projected Reporting, Record-keeping, and Other Compliance Requirements.

20. All license applicants are subject to the reporting and record-keeping requirements of the competitive bidding rules.²⁸ Specifically, applicants are required to apply for spectrum auctions by filing a short-form application prior to auction. Applicants are also required to file a long-form application at the conclusion of an auction. Entities seeking treatment as "small businesses" must disclose on their short- and long-form applications, separately and in the aggregate, the gross revenues of the applicant, its controlling interests (as that term is defined in this *Fifth Report and Order*), and their affiliates.

E. Steps Taken to Minimize the Economic Impact on Small Entities, and Significant Alternatives Considered.

21. The Commission has considered the economic impact on small entities of the following rules and modifications adopted in this *Order* and has taken steps to minimize the burdens on small entities.

Attribution of Gross Revenues of Investors and Affiliates. The Commission adopts a "controlling interest" standard for attributing to an applicant the gross revenues of its investors and affiliates in determining whether the applicant qualifies as a small business.²⁹ Application of the controlling interest standard protects the interests of small businesses by preventing larger firms from illegitimately seeking small business status and ensuring that only those entities truly meriting such status are eligible for the small business provisions. The Commission further concludes that the eligibility of current C and F block licensees to continue to hold their licenses will not be reassessed based on the new attribution rules.³⁰ Therefore, these licensees will continue to be eligible to hold their licenses regardless of whether or not they would qualify under the newly established attribution rules. By applying the current, rather than the new, rules to existing C and F block licensees, the Commission eliminates the burden on such licensees of having to restructure to meet new standards in order to remain licensees.

Administrative Filing Periods for Applications and Petitions to Deny. The Commission establishes a maximum 10-day filing period for submitting petitions to deny against long-form applications.³¹ The Commission increases the filing period from 5 days (as adopted in the *Part 1 Third Report and Order*) to 10 days in order to afford parties (including small businesses) additional flexibility in challenging license applications.

22. In addition to the modifications adopted in this *Fifth Report and Order*, the Commission affirms its existing rules with respect to certain other issues affecting small businesses. Specifically, the

²⁷ See Appendix C at section C, *supra*.

²⁸ See 47 C.F.R. Part 1, Subpart Q.

²⁹ See *supra* ¶¶ 58-67.

³⁰ See *supra* ¶ 67.

³¹ See *supra* ¶¶ 74-77.

Commission declines, at this time, to adopt special provisions for minority- and women-owned businesses pending completion of a series of market studies to determine whether, and under what circumstances, targeted preferences for minorities and women are appropriate.³² The Commission notes, however that minority- and women-owned businesses that qualify as small businesses may take advantage of the provisions adopted for small businesses. In addition, the Commission declines, at this time, to adopt special provisions for rural telephone companies, such as bidding preferences or an unserved area fill-in policy.³³ The Commission notes, however, that it will continue to provide rural telephone companies with bidding credits should such entities qualify as small businesses. The Commission further determines that, for the time being, it will not offer installment payments for auctionable services.³⁴ The Commission notes that commenters did not offer suggestions as to how to retain the program or alternatives to replace the program. The Commission states that it will, as it has done in the LMDS, LMS, 220 MHz Service, and VHF Public Coast Service auctions, continue to provide small businesses with bidding credits.

F. Report to Congress.

23. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of the *Order* and this FRFA (or a summary thereof) will be published in the Federal Register. *See* 5 U.S.C. § 604(b). A copy of the *Order* and this FRFA will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

³² *See supra* ¶¶ 45-50.

³³ *See supra* ¶¶ 51-53.

³⁴ *See supra* ¶¶ 54-57.

APPENDIX E

INITIAL REGULATORY FLEXIBILITY ANALYSIS

(FOURTH NOTICE)

2. As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the rules proposed in this *Fourth Further Notice of Proposed Rule Making* ("*Fourth Notice*") in WT Docket No. 97-82. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the *Fourth Notice*. The Commission will send a copy of the *Fourth Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *Fourth Notice* and IRFA (or summaries thereof) will be published in the Federal Register.

G. Need for, and Objectives of, This *Fourth Notice*.

24. This *Fourth Notice* is being initiated to secure comment on additional issues relating to the general competitive bidding rules for all auctionable services. Specifically, the *Fourth Notice* seeks comment on whether the Commission should use a total assets test, in conjunction with the gross revenues measure already employed, in determining whether auction applicants qualify as small businesses. The Commission seeks to ensure that only *bona fide* small businesses are eligible for the small business provisions. It, therefore, solicits comment on whether the application of a total assets test would enhance its determinations of small business status. Further, in the *Fifth Report and Order*, the Commission adopts as its general attribution rule a "controlling interest" standard, which provides for the full dilution of certain stock interests for purposes of calculating equity held in an applicant.² In this *Fourth Notice*, the Commission proposes to codify in the Part 1 competitive bidding rules the policy under which it previously adopted two exceptions to the "fully diluted" requirement of its broadband PCS attribution rule.³ Under these exceptions, two types of ownership interests, "rights of first refusal" and "put" options, would not be considered on a fully diluted basis for purposes of calculating ownership levels.⁴ The Commission also seeks comment on whether it should adopt a third exception to the "fully diluted" requirement of Section 1.2110(b)(4)(v) of the Commission's Rules.⁵ The Commission proposes that, in calculating the equity held in an applicant, the conversion rights or stock options be considered individually rather than collectively when they are mutually exclusive. The Commission believes that these proposals will enhance its assessments of small business eligibility.

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² See *supra* ¶¶ 58-67.

³ See Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403, 454-56, ¶¶ 93-95 (1994) ("*Fifth MO & O*").

⁴ *Id.*

⁵ 47 C.F.R. § 1.2110(b)(4)(v) (redesignated as 47 C.F.R. § 1.2110(c)(5)(v)).

H. Legal Basis.

25. This action is taken pursuant to Sections 4(i), 5(b), 5(c)(1), 303(r), and 309 (j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 155(b), 155(c)(1), 303(r), and 309(j).

I. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.

26. The Commission is required to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁶ The rules proposed in this *Fourth Notice* would apply to license applicants seeking small business status in all future auctions. In estimating the number of small entities that may participate in future auctions of wireless services, the Commission anticipates that the makeup of current wireless services licensees is representative of future auction participants. The Commission hereby incorporates into this IRFA section the Supplemental FRFA analysis and descriptions of potentially affected small entities.⁷

J. Description of Reporting, Recordkeeping, and Other Compliance Requirements.

27. The *Fourth Notice* proposes the adoption of a total assets test to be used in conjunction with the gross revenues measure already employed in determining whether auction applicants qualify as small businesses. The total assets test would require auction applicants seeking small business status to disclose their assets.

K. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.

28. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule or any part thereof for small entities.⁸

29. The Commission has adopted specific provisions to promote small business participation in spectrum auctions. In order to ensure that only those entities truly meriting small business status qualify for special preferences, such as bidding credits, the Commission must have an accurate and easily applicable method of calculating business size. While it has concluded in the past to use gross revenues as the measure of business size, it now seeks comment on whether to use a total assets test as well. The Commission also seeks comment on whether it should adopt exceptions to the general requirement that certain stock interests are treated as fully diluted in calculating the equity held in an applicant. These proposals are intended to help the Commission realize its goal of widening the opportunities for small businesses in the spectrum auction program.

⁶ 5 U.S.C. §§ 603(b)(3).

⁷ See Appendix C at section C, *supra*.

⁸ See 5 U.S.C. § 603.

L. Federal Rules Which Overlap, Duplicate, Or Conflict With These Rules.

30. None.